IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.2.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.3974 of 2003

1. M.Paranthaman
2. S.Nagarajan .. Petitioners

vs.

1. Union of India, rep. by its
Secretary to Government of India,
Ministry of Agriculture,
(Department of Animal Husbandary &
Dairying),
Krishi Bhavan,
New Delhi-1.

2. The Director,
Central Cattle Breeding Farm,
Avadi (Alamathi),
Chennai-600 052.

3. The Registrar,
Central Administrative Tribunal, Chennai Bench,
High Court Campus,
Chennai. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, after calling for concerned records relating to the impugned order dated 9.1.2003 in O.A.No.950 of 2002 passed by the Central Administrative Tribunal, Chennai Bench, and quash the same and consequently direct the respondents 1 and 2 to reinstate the petitioners in service with effect from 9.10.1992 i.e. the date on which they were denied employment and direct the respondents 1 and 2 to regularise the services of the 1st petitioner with effect from 24.7.1991 as per the order of the 1st respondent No.8-7/89-LD.II, dated 2.8.1991 with all consequential benefits and grant temporary status to the second petitioner with effect from 1.9.1993 as has been done in the case of other casual labourers and grant them all consequential monetary and other benefits.

For petitioner : Mr.M.Gnanasekar
For respondents : Mr.L.M.Praghasam for RR-1 & 2
R-3 Tribunal

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ORDER

(The Order of the Court was made by R.Sudhakar,J.)

The writ petition has been filed challenging the order dated 9.1.2003 in O.A.No.950 of 2002 passed by the Central Administrative Tribunal, dismissing the Original Application.

2. The prayer before the Tribunal in O.A.No.950 of 2002 is as follows:

> "a. Set aside the order No. 55/XIV/Lab./2002/1342, dated 08.10.2002 passed by the 2nd respondent, and
>
> b. Direct the Respondents to re-instate the Applicants in service with effect from 08.10.1992 i.e. the date on which they were denied employment and direct the Respondents to regularise the services of the 1st Applicant w.e.f. 24.07.1991 as per the order of the 1st respondent No.8-7/89-LD.II, dated 02.08.1991 with all consequential benefits and grant temporary status; to the second Applicant with effect from 01.09.1993 as has been done in the case of other Casual Labourers and grant them all consequential monetary and other benefits."

3. In the instant case, the relief sought for by the first petitioner has been granted by the proceedings of the respondents as is evident from the counter affidavit. The first petitioner confirms that the relief has been granted to him. Hence, in the writ petition, we are concerned with the second petitioner alone.

4. The brief facts of the case are as follows:

The petitioners were initially appointed on 8.10.1982 on casual basis in the second respondent-Central Cattle Breeding Farm. On 2.8.1991, a Departmental Selection Committee found the first and second petitioners suitable for the post of Agriculture Attendant. On 26.8.1991, the first petitioner was appointed as Agriculture Attendant on ad-hoc basis and continued till 31.12.1992. The second petitioner was not appointed for want of vacancy. On 27.9.1992, the petitioners were implicated in a criminal case. On 30.9.1992, the Sub-Inspector of Police, Vengal Police Station, sent a letter to the second respondent about the involvement of the petitioners in the criminal case. On 13.10.1992, fearing arrest, petitioners filed Crl.O.P.No.13008 of 1992 and obtained an order of anticipatory bail with conditions. On 4.1.1993, the Sub-Inspector of Police gave a letter to the second respondent stating that he has no objection for taking the petitioners back to work. On 28.2.1993, it is stated that the petitioners reported to duty and were not allowed to join, therefore, a representation was made on the same day. Thereafter,

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the petitioners filed O.A.No.1331 and 1332 of 1993 for a direction to reinstate them. On 28.3.1995, the Tribunal dismissed the applications on the ground that the prayer for re-engagement cannot be granted in view of the pendency of the criminal case. It was however observed that it was open to the respondents to re-engage the petitioners if they are exonerated by the Police or Court. It was also observed by the Tribunal that the petitioners were working from 1982 onwards and therefore, the benefit of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993, can be considered after the completion of the criminal case. By order dated 20.7.2001, both the petitioners were acquitted in the criminal case. After the acquittal by the criminal Court, a representation dated 26.7.2001 was made to the second respondent to grant temporary status with effect from 1.10.1993. Thereafter, several correspondences took place between the petitioner and the second respondent and by lawyer's notice dated 29.12.2001, the petitioners called upon the second respondent to implement final order of the Tribunal in O.A.No.1331 and 1332 of 1993 dated 28.3.1995 and reinstate them in service. The first respondent by letter dated 4.1.2002 also called upon the second respondent to furnish certain details relating to casual labourers, the said letter reads as follows:

> "Subject: Re-instatement of Shri S.Nagarajan, Casual Labour and Shri M.Paranthaman, Agri.Attdt.,(Ad-hoc) in CCBF, Chennai-reg.
>
> Sir,
>
> I am directed to refer to your letter No.26/XIV/Labour/2001/dated 30.7.2001 on the subject mentioned above and to request you to furnish full details of casual labour at present and at the time when above two labours were sent out of job. Whether these two are covered by the scheme of 1993. Other details like how many junior persons have been regularised, whether there is any vacancy at present and whether it is a permanent post or temporary one and if temporary one whether it is continued for the block years 2001-02 may also be furnished."

Accordingly, on 29.1.2002, the second respondent furnished details including the three vacancies in Group-D temporary post. The petitioners filed another O.A.No.683 of 2002 before the Tribunal seeking direction to reinstate them with consequential benefits. The Tribunal, by order dated 26.7.2002, passed a final order directing the respondents to dispose of the representation and the notice, both dated 26.7.2001, within a period of six weeks from the date of communication of the order. By proceedings dated 8.10.2002, the request for reinstatement was rejected by the second respondent stating that there was no work at the Farm and no casual labourers were appointed then. Therefore, the petitioners filed O.A.No.950 of

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2002 challenging the order of the second respondent dated 8.10.2002 denying reinstatement and sought for reinstatement with effect from 8.10.1992. This was contested by the respondents and by order dated 9.1.2003, the Tribunal held that there was no evidence before the Tribunal to show that the posts were available in order to accommodate the petitioners so as to give a direction for reinstatement or to regularise their services, in view of the position that there was no work in the Farm and no casual workers were appointed. The Tribunal held that the second applicant is only the casual labourer, and therefore, rejected his claim. As far as the first applicant is concerned, the Tribunal directed the respondents to consider the case of the first applicant as and when the post is made available or sanctioned by the Government of India. As against the same, the writ petition has been filed.

5. Learned counsel for the petitioner would submit that the petitioners were working from 1982. But for the criminal case pending against them, they should have been considered for regularisation and consequential benefit under the said Scheme. The petitioners also pleaded that their juniors have been regularised and it is only because of the criminal case, they could not be considered at the appropriate time. However, as and when they were acquitted in the criminal case, they sought for reinstatement and for regularisation which has been negatived arbitrarily.

6. A counter has been filed by the second respondent wherein it has been stated that the case of the first petitioner was considered pursuant to the order of the Tribunal dated 9.1.2003 and the Ministry has sanctioned and approved the regular appointment of the first petitioner in Group-D post. However, as regards the second petitioner, it is submitted that he was only a casual labourer and he was not considered for regularisation by the Departmental Promotion Committee for want of vacancy and therefore, he continued as casual labourer upto 30.9.1992. It is also admitted that one post of Agriculture Attendant is lying vacant since 30.9.1992 which could not be filled due to ban on recruitment and pending decision of the Court in O.A.No.1332 of 1993. It was further contended in the counter that since the Tribunal has directed that the case of the first petitioner alone should be considered, the case of the second petitioner was not considered by the Department.

7. At the time of final hearing of the above writ petition, learned counsel for the petitioner brought to our attention an order of this Court in W.P.No.15668 of 2001, dated 20.2.2004, as confirmed by the First Bench of this Court in W.A.No.2144 of 2005 by judgment dated 22.11.2005. In that case, the writ petition relates to the claim of the Union representing the employees working in the second respondent-Farm. In the said writ petition, the claim was for regularisation of certain number of casual workmen on the ground that they had completed 240 days in 12 calendar months as required under law and also on the basis of the undertaking made by the Management before the Central Administrative Tribunal in its order dated 5.6.1989. A learned single Judge of this Court therefore allowed the writ petition and quashed the award dated 8.8.2001

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passed by the Tribunal and directed the Management to pass appropriate orders regularising the services of casual labourers of the Union with effect from the date of raising the industrial dispute before the competent authority and for consequential benefit of completion of continuity of service for all terminal/retirement benefits from the date of completion of 240 days' services in 12 calendar months in the Management. As stated earlier, this order of the learned single Judge was confirmed by the First Bench of this Court. Placing reliance on the abovesaid decision, the second petitioner would submit that he would be entitled to the same relief as he has completed 240 days in 12 calendar months long before and therefore, his claim also to be considered on the same basis.

8. The fact that the second petitioner was appointed in 1982 is not disputed and that he has been in service for more than ten years when the untoward incident happened wherein petitioners were implicated in the criminal case and ultimately acquitted. But for the said event, the case of the second petitioner should have been considered for regularisation under the said 1993 Scheme. The criminal case has also ended in favour of the second petitioner. The only ground now stated is that there is no work at the Farm. Hence, at the present moment, there is no impediment to take the second petitioner in the vacancy admitted by the respondents in the counter affidavit. It is not disputed that pursuant to the order of the Court in W.P.No.15668 of 2001, all the casual labourers (workers) have been taken for regular appointment. There cannot be a different treatment to the second petitioner. In any event, the only reason given in the counter affidavit is that the second petitioner is a casual labourer and was not considered for regularisation by the Departmental Promotion Committee for want of vacancy and therefore, he continued as casual labourer upto September 1992. However, it is also stated that one post of Agriculture Attendant is lying vacant since 30.9.1992. That being the case, there cannot be any impediment to consider the claim of the second petitioner in the said post. It is not disputed by the respondents that the 1993 Scheme will not apply to the second petitioner. Hence, the order rejecting the claim of second respondent is bad.

9. The writ petition is allowed in part. The second petitioner shall be taken into appointment from 9.10.2003 as is the case of the first petitioner. However, the second petitioner shall not be entitled for any monetary benefits for the past period till today and such period can be taken into for the purpose of increment and other benefits in future. The second petitioner shall be permitted to join duty within thirty days from the date of receipt of copy of this order. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary
Union of India,
Ministry of Agriculture,
(Department of Animal Husbandary &
Dairying),
Krishi Bhavan,
New Delhi-1.

2. The Director,
Central Cattle Breeding Farm,
Avadi (Alamathi),
Chennai-600 052.

3. The Registrar,
Central Administrative Tribunal, Chennai Bench,
High Court Campus,
Chennai.

+1cc to Mr.M.Gnana Sekar,Advocate Sr 7342
+1cc to Mr.L.N.Praghasham, Advocate Sr 7292

MAB (CO)
km/28.2.

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